MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-ninth Session
April 5, 2017

The Senate Committee on Health and Human Services was called to order by Chair Pat Spearman at 3:51 p.m. on Wednesday, April 5, 2017, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Julia Ratti, Vice Chair
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator Scott Hammond

GUEST LEGISLATORS PRESENT:

Senator Yvanna D. Cancela, Senatorial District No. 10

STAFF MEMBERS PRESENT:

Megan Comlossy, Policy Analyst
Eric Robbins, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Tom Morley, Laborer's Union Local No. 872
Damon Haycock, Executive Officer, Public Employees' Benefits Program
Marta Jensen, Acting Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
Ellen Crecelius, Deputy Director, Fiscal Services, Department of Health and Human Services
Brigid Duffy, Director, Juvenile Division, Office of the District Attorney, Clark County

Jennifer Kuhlman, Chief Deputy District Attorney, Office of the District Attorney, Clark County
Melissa Exline, Nevada Justice Association
Amber Howell, Director, Department of Social Services, Washoe County
Bailey Bortolin, Legal Aid Center of Southern Nevada; Washoe Legal Services
Paula Hammack, Acting Director, Department of Family Services, Clark County
Debra Sisco, Supervisor, Reimbursement, Analysis and Payment, Division of Health Care Financing and Policy, Department of Health and Human Services
Joan Hall, President, Nevada Rural Hospital Partners
Bill Welch, Nevada Hospital Association
Catherine O'Mara, Nevada State Medical Association
Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada
Stephanie Cook, Washoe Legal Services
Cody L. Phinney, Administrator, Division of Public and Behavioral Health, Department of Health and Human Services
Kathleen Conaboy, Ambulatory Surgery Center Association
Danny Thompson, Laborers Union Local No. 872
Heather Korbulic, Executive Director, Silver State Health Insurance Exchange
Dan Musgrove, Amerigroup
Fran Almaraz, Teamsters Local No. 631; Teamsters Local No. 986
Ryan Beaman, Clark County Firefighters Local 1908
Rusty McAllister, Nevada State AFL-CIO

SENATOR SPEARMAN:
I will open the hearing on Senate Bill (S.B.) 366.

SENATE BILL 366: Revises provisions relating to Medicaid and the release of health insurance claims data under certain conditions. (BDR 38-927)

SENATOR YVANNA D. CANCELA (Senatorial District No. 10):
There is a conceptual amendment to S.B. 366 (Exhibit C). The amendment proposes to keep sections 1, 2, 4 and 5 of the bill and delete the remaining sections.

There are a number of changes being made to S.B. 366, but the intent remains intact. Databased decision making is the best kind of decision making. This is a time when there are many changes coming to Medicaid funding from the federal

level and the state level regarding the allocation of Medicaid dollars. The intent of S.B. 366 is to give us more data in order to make better decisions.

Section 2 states the director of the Department of Business and Industry will compile a list of employers with over 50 employees that have employees on Medicaid. The bill language requests the number of employees on Medicaid from each employer, the number of employee's spouses on Medicaid and whether or not the employer provides health care.

The idea is to have a list to rank employers by how many of their employees are on Medicaid. This will allow us to see what entities are functionally subsidized by Medicaid for health care costs. The report will be published online and submitted to the Director of the Legislative Counsel Bureau for transmittal to the Legislature, the Governor and the Lieutenant Governor.

Section 3 is deleted in its entirety.

Section 4 creates the Advisory Committee on Medicaid Innovation within the Department of Health and Human Services (DHHS). The Director will appoint members to serve on the Advisory Committee on Medicaid Innovation. The board will be comprised of members of the Executive Branch serving for two-year terms.

Section 5 outlines the topics to be discussed by the Advisory Committee on Medicaid Innovation. Specifically, the Advisory Committee will discuss the manner in which to create or expand public or private prescription purchasing coalitions and the manner in which to encourage access to employer-based health insurance plans, including without limitation, coordinating coverage provided by the State Plan for Medicaid. The Advisory Committee will discuss private health insurance which may be provided by an employer to a person eligible for Medicaid. It will discuss providing assistance to a person who is eligible for Medicaid by allowing that person to purchase private health insurance. Additionally, there will be opportunities to apply to the Secretary of the United States Department of Health and Human Services for certain waivers pursuant to the U.S. Code. Lastly, at least once each year, the Advisory Committee shall make recommendations to the Director.

Another small change in section 5, subsection 2, in reference to the recommendations to the Director the Advisory Committee deems appropriate

relating to opportunities to improve Medicaid or to increase access to private health insurance, I would like the word "private" deleted so it just reads health insurance. The rest of bill can be deleted and S.B. 366 will end after section 5.

TOM MORLEY (Laborer's Union Local 872):
We support S.B. 366.

DAMON HAYCOCK (Executive Officer, Public Employees' Benefits Program):
The Board of the Public Employees' Benefits Program (PEBP) met regarding this bill, and I am authorized to support it. One of the things we liked about the bill as it applies to PEBP is that *Nevada Revised Statutes* (NRS) 287.0425 requires the Executive Officer to submit reports to the Legislature, the Interim Retirement and Benefits Committee, the Board of the Public Employees' Benefits Program, the Director of the Office of Finance and others. That includes financial statements and most importantly, the utilization of the program. This program is not only a consumer-driven plan but includes all the plans we offer, even our fully insured products.

The deleted section 6 in S.B. 366, discusses data specifically to support the requirement. Ironically, we just signed contracts for our fully insured products and included this language in these contacts. The Board was in full support of the transparency of the requirement outlined in section 6.

MARTA JENSEN (Acting Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services):
The DHHS is neutral on the bill. Over the last year, and throughout the Session, we have heard much about the lack of transparency in Medicaid-related information. We have heard about the need for data regarding services, rates, costs and factors that impact our benefit packages. We received support from the Interim Finance Committee for additional positions to begin implementing a health information and analytics unit to improve our data-driven decision making. As we have demonstrated, we support the use of data for improving quality and containing our health care costs.

While we have some concerns related to the data sharing as currently written in the bill, we are willing to work with the sponsor to resolve these issues.

ELLEN CRECELIUS (Deputy Director, Fiscal Services, Department of Health and Human Services):
The DHHS is focusing on developing data-driven decision making and policy analysis. We have some ongoing projects that are somewhat related to this bill. For example, we are working with the Department of Employment, Training and Rehabilitation to match data to better understand how our clients are tied to the labor force. We will be able to identify and target interventions to help clients achieve self-sufficiency.

We are working on another project using the fee-for-service and managed-care claims data to understand the health status of our clients and to identify opportunities for prevention and early intervention to control costs and improve population health. Since this bill is related to increased data sharing, we feel it will help with these efforts.

SENATOR CANCELA:
This bill is all about getting more information to ensure we are controlling our own destiny as it relates to Medicaid. We are having thoughtful conversations about innovation and cost control while compiling data for good decision making.

CHAIR SPEARMAN:
I will close the hearing on S.B. 366 and open the hearing on S.B. 432.

SENATE BILL 432: Authorizes the filing of a motion for the termination of parental rights as part of a proceeding relating to the abuse or neglect of a child. (BDR 38-475)

BRIGID DUFFY (Director, Juvenile Division, Office of the District Attorney, Clark County):
I made contact with Senator Becky Harris because this is a bill from the Senate Committee on Judiciary. The bill was not assigned to a Senator, so we are presenting it. We appreciate the Judiciary Committee making this request on behalf of the Clark County District Attorney's Office.

JENNIFER KUHLMAN (Chief Deputy District Attorney, Office of the District Attorney, Clark County):
Senate Bill 432 is a procedural bill that will move the termination of parental rights proceedings from NRS 128 into NRS 432B. We previously made a similar

change in 2003 by moving NRS 159 into NRS 432B. This bill does not propose substantive changes to the grounds of terminating parental rights.

This bill will make the termination process more efficient and enable us to achieve permanency for children in a more timely fashion. We conducted a statewide collaboration with the stakeholders, agencies, prosecutors, children's attorneys and parents' attorneys. We worked together and believe this bill is important to the system as well as the families we serve.

A summary of the bill includes section 1 which provides for the amendment of NRS 432B.

Section 2 ties NRS 128 to NRS 432B and allows the filing of a motion to terminate parental rights rather than filing a petition. It also requires the filing of a motion if the child has been out of the home for a period of 12 months.

Section 3 addresses service processing issues, including the addition of adoptive parents to the notice of termination proceedings as well as publications and adding notice to the statute.

Section 4 codifies the rights of parties at the initial termination hearing.

Section 5 adds a court-ordered mediation to enable the prospective adoptive parents and the biological parents to negotiate an open adoption agreement should the biological parents choose to relinquish parental rights.

Section 6 allows the admission of oral or written reports in an evidentiary hearing as long as the parties have an opportunity to cross-examine the person making the report.

Section 7 adds a requirement to the district court to use its best efforts to render a decision within 30 days of the close of evidence.

Section 8 similarly adds a requirement for the appellate court to use its best efforts to provide specified time periods, depending on the type of appeal, to narrow the process.

Section 9 requires the juvenile court to retain jurisdiction over any action to restore parental rights by requiring it to be filed in the underlying abuse and neglect proceeding.

Section 10 adds a provision to NRS 128 clarifying the statute applies to all termination proceedings to the extent it does not conflict with the amendments in this bill.

After S.B. 432 was submitted and drafted, we discovered the intent of the stakeholders had been changed, so Clark County submitted a proposed amendment to the bill (Exhibit D).

The proposed amendment removes service by mail in section 3, subsection 1, paragraph (a). Additionally, we added language regarding persons whose whereabouts are unknown. We clarified personal service is only required if there is a last known address. The amendment permits personal service and publishing to be conducted simultaneously and requires that notice be provided to an Indian Tribe should a child meet the definition of an Indian child under the statute.

Finally, in section 3, there is a change to notice the proceeding of the prospective adoptive parents, as their information should be maintained as confidential. Also, the adoptive parents will not be entitled to the motion itself as it may contain confidential information they are not entitled to see. The adoptive parents will only be served with a copy of the notice of the hearing.

After the amended language to section 3 was submitted, we had conversations with legal services. There are further amendments regarding if a person's whereabouts are unknown. We are in agreement with the requested changes.

Section 4 removes language regarding additional notifications because it is redundant to other language in the bill.

Section 7 clarifies language regarding the time lines that district courts should follow, giving the court flexibility to render a decision in writing or orally. The language originally made the court render a decision orally.

Without these language changes, we have to file two separate cases. There would be an underlying abuse and neglect case as one case in the court system.

When seeking to terminate parental rights, there must be a separate action initiated which creates inefficiencies in the system. The separate action also lengthens the amount of time it takes to get to permanency for children when reunification is no longer an option. We believe this bill will eliminate many of the inefficiencies within the process, and when we do have to move forward with the termination of parental rights, it will be in a more expeditious and efficient manner.

SENATOR HAMMOND:
It sounds like the bill does not really disturb the reunification process. The next part of that process is the termination of parental rights. Once the reunification is no longer an option, does the process progress to the termination of parental rights in order to get these children into a permanent place with their lives moving forward?

MS. KUHLMAN:
Yes. This is procedural. Our primary concern and focus in child welfare is to effectuate reunification. In these cases where we cannot reunify a child with the family, we want to move these children to an alternate permanency, most likely adoption, in a more timely manner. This bill addresses inefficiencies within the process to allow us to act more quickly once the juvenile court has determined reunification is not likely to occur.

SENATOR HAMMOND:
Are you addressing the inefficiencies within the process so you can move on to another case a little more quickly?

MS. KUHLMAN:
Yes.

MELISSA EXLINE (Nevada Justice Association):
We support S.B. 432. Our law office does work for the folks who receive placements as the adoptive parents who are part of the NRS 432B process. This bill is important to making the process more efficient.

Looking at the way NRS 128 is structured, there are various players looking at termination of parental rights who must go through a specific process for another petition to begin the process as a new case. With respect to these concluded cases after working through an entire NRS 432B process with no

reunification, considerable work has gone into the case. After the end point of NRS 432B, the natural progression for permanency and a placement would be to determine what makes sense.

Instead of having to start all over again with a brand new petition, a natural stopping point is to conclude the process with a motion. The bill is worded to keep the important protections in place regarding how the motion is served. It does not extract portions of NRS 128 that need to be in place, but instead of the rigidity and formality of a petition, it is included at the end of an NRS 432B case. The process makes sense and is considered a unified approach. There are other states following this process, such as Arizona. This is a good bill.

AMBER HOWELL (Director, Department of Social Services, Washoe County):
We support S.B. 432.

BAILEY BORTOLIN (Legal Aid Center of Southern Nevada; Washoe Legal Services):
We support S.B. 432 with the amendment.

PAULA HAMMACK (Acting Director, Department of Family Services, Clark County):
We support S.B. 432.

CHAIR SPEARMAN:
I will close the hearing on S.B. 432 and open the hearing on S.B. 509.

SENATE BILL 509: Authorizes the imposition of an assessment on certain providers of health care. (BDR 38-980)

DEBRA SISCO (Supervisor, Reimbursement, Analysis and Payment, Division of Health Care Financing and Policy, Department of Health and Human Services):
Senate Bill 509 is primarily focused on enhancing supplemental reimbursement to Medicaid providers to improve the quality and access to health care in Nevada. As you know, Nevada is a balanced-budget state, and one of the challenges the Division of Health Care Financing and Policy (DHCFP) faces is increasing reimbursement to Medicaid providers. Since Medicaid funding is limited, we must look at alternative sources.

A provider fee program will allow health care providers to partner with Nevada Medicaid to enhance and increase their reimbursement for Medicaid services. A

provider fee is a fee that is assessed on all similar health care providers within an individual provider group. These groups are defined by similar licensure or certification. Once the provider fee is assessed, it can be used as the nonfederal share to draw down additional federal Medicaid funds and enhance reimbursements to Medicaid providers within the provider group.

Nevada has one skilled nursing facility provider fee program that has been in existence since 2003. In fiscal year 2016, approximately $31 million was collected in provider fees from free-standing nursing facilities. This money was used as the nonfederal share of Medicaid resulting in approximately $87 million being paid out to skilled nursing facilities.

This skilled nursing facility provider fee program is written into NRS and creates a challenge. Since the Legislature only meets every two years, this does not allow us to develop provider fee programs during the Interims. By approving the permissive language in S.B. 509, the DHCFP can develop provider fee programs with individual provider groups at any time anyone expresses an interest. The operation of the provider fee program will be included in the *Nevada Administrative Code* and can be revised as the programs are developed. The Division held a public workshop on December 19, 2016, to determine if there was provider interest in developing these provider programs. Providers expressed interest and we are pursuing informal discussions.

We know not all provider fee programs will be beneficial to all provider types due to the various ways Medicaid provides reimbursement. Due to the ever-changing health care and Medicaid funding environments, we feel this is the best way to promptly respond to potential changes in federal funding and the health care changes in our environment.

After submitting the bill, we met with additional stakeholders who have asked for a couple of amendments. Section 6, subsection 1 currently reads, "Except as otherwise provided in this section, after polling the providers of health care in a provider group and receiving an affirmative vote from a majority of the providers …," we would like to add "supermajority." The definition of supermajority is a two-thirds majority.

Also in section 6, subsection 3, we would like to add a sentence of clarification, "Upon such an enactment of a prohibition, any assessment established pursuant to this section will not be collected after the effective date of such change and

undistributed funds will be returned to members of the respective provider groups."

In section 8, subsection 2, we would like to change the language to read, "Before doing so, the Division must notify the provider of health care and may negotiate a payment plan with a provider of health care." This clarifies the provider will be notified.

JOAN HALL (President, Nevada Rural Hospital Partners):
Critical access hospitals in Nevada recognize the potential for enhanced reimbursement through Medicaid from this bill. We support S.B. 509.

BILL WELCH (Nevada Hospital Association):
I would like to acknowledge the State Medicaid Program in looking for creative ways to increase revenue funds to enhance Medicaid provider reimbursements. As this program moves forward, we hope to be successful in encouraging more providers to participate in the Medicaid Program by treating Medicaid recipients. We think this is a great opportunity.

I am testifying neutral because we are one of the entities working with the DHCFP on some proposed changes. As we work with the Division representatives and review the proposed amendments, our position may change. We believe there is an opportunity to benefit from this Legislation.

CATHERINE O'MARA (Nevada State Medical Association):
We are neutral with some concerns about S.B. 509 as written. We appreciate the attempts from the Medicaid office to find creative ways to fund Medicaid in Nevada. We are here every Session asking for Medicaid increases, and we want to be part of a solution for additional funding sources. We have to recognize there are serious access issues in Nevada related to physician providers, both in Medicaid and in non-Medicaid funding revenues. While we appreciate the efforts of the Division to bring money to the State for Medicaid reimbursement, we hope through the regulatory process they will understand that it may not work for all providers. We have serious concerns about how this may or may not work for the physician providers.

We have not seen any positive data from other states that have implemented this at the physician provider level. We know it can work quite well at some of the facility levels. As an example, there are about 60 hospitals that could be

affected by this bill. When the hospitals are polled, with a supermajority of 60-plus, it will not be difficult to come up with an accurate accounting of the wants of the providers. Talking about 6,000 medical doctor licenses and 1,000 doctor of osteopathy licenses, you enter a complicated area of how to poll everyone to provide a reasonable opportunity to respond. Will they be looking at different specialties or will they be looking for all physician licensees as one? If we lean toward licensees, we have to acknowledge there are both groups and individuals.

Let us take oncology as an example. The major oncology groups could make up two-thirds of the supermajority requirement. What does that do to our individual oncologists who are practicing alone that may not want this provider tax or may not have the billing infrastructure to comply with the requirement by taking Medicaid patients? We have some concerns which we have discussed with the sponsors of the bill.

Regarding the differences between facilities and physicians, facilities have more ability to negotiate a commercial rate from commercial payers. The reality of accepting Medicaid patients has to include a healthy commercial line of business to make ends meet within the budget. In a small practice, there is less of an opportunity to ensure the commercial rates stay at the level needed in order to take Medicaid patients. Some physician providers cannot afford to take Medicaid patients.

Even though this program may encourage physicians to take Medicaid patients, the physicians will be taxed on the front end. We want to ensure this program will work. We are neutral because we recognize this authorizes the Division to pursue this project. We want to make sure everyone is up front, and with changes, we may decide we are in opposition to the bill later.

MS. JENSEN:
I want to make sure everyone understands this bill allows us to work with the provider community that is interested in this program. We are looking at creative ways to bring additional funding into the State. We have no intent of doing harm and recognize the access to care issues and the reimbursement struggles we have across the State. We have some interested parties, but as these discussions progress, they may decide it is not in the best interest of their group. We will recognize that and move to a different group. We really want the

opportunity to engage in conversation with interested parties more frequently than every two years.

SENATOR HARDY:
Are you envisioning a supermajority in one group and a supermajority in another group?

MS. JENSEN:
Yes. At this time, it is very premature but we are trying to get the conversations started. We have individual groups who have expressed interest, but it is interest only. There has been no discussion of what the result will actually look like.

CHAIR SPEARMAN:
I will close the hearing on S.B. 509 and open the hearing on the work session bills beginning with S.B. 305.

SENATE BILL 305: Revises provisions regarding certain proceedings concerning children. (BDR 38-926)

MEGAN COMLOSSY (Policy Analyst):
Following the work session document (Exhibit E), S.B. 305 was heard in this Committee on March 29. The bill requires the court to appoint an attorney to represent a child who is alleged to have been abused or neglected in civil child protection proceedings and proceedings to terminate parental rights. It provides a child is deemed to be a party to such proceedings. In addition, S.B. 305 provides a court-appointed guardian ad litem is not entitled to compensation for payment of expenses. The bill eliminates language authorizing a court-appointed attorney who represents a child as his or her legal counsel to also be appointed as the child's guardian ad litem.

There were amendments proposed by the sponsor of the bill. The attached proposed amendment, Exhibit E, was presented during the bill hearing. It clarifies that an attorney paid through the county legal services program is not entitled to compensation pursuant to provisions related to the protection of children from abuse and neglect, and authorizes a board of county commissioners to charge a recording fee up to $6.

In addition, the second proposed amendment is to revise subsection 4 of section 1 to add language related to legal-aid attorneys who are otherwise compensated by the county.

The third proposed amendment deletes paragraphs (c) and (d) of subsection 1 of section 2, which are lines 1 through 3 on page 3.

The final proposed amendment would revise the effective date for provisions related to the recording fee to become effective on October 1.

I understand there may be one other amendment not to delete certain language.

SENATOR RATTI:
Our intent with the proposed amendment is to provide two things. The first is to clarify the language around who can be paid and who cannot be paid, which is included in the work session document amendment, Exhibit E, "If an attorney is paid through the legal services program in a county, that attorney is not entitled to compensation under this statute." This specifically addresses some of the questions Senator Hardy had during the hearing.

The second piece that may promote questions is our intent to address some of the concerns Senator Hammond expressed during the hearing regarding "guardian ad litem." I am not sure the paper version we have in front of us fully reflects our intent.

BARBARA BUCKLEY (Executive Director, Legal Aid Center of Southern Nevada):
Following the hearing and a discussion with Senator Ratti, we would like to eliminate the concerns Senator Hammond raised during the hearing. I believe the language that caused concern was in section 2. The proposal is to remove section 2 in its entirety.

SENATOR HAMMOND:
I would like to put back in the language that was struck from subsection 4 of section 1, "Except as otherwise provided in NRS 432B.500, an attorney appointed to represent a child may also be appointed as guardian ad litem for the child."

MS. BUCKLEY:
The only concern with adding that language back into the bill is no child's attorney would do it. An individual cannot be both a client-directed attorney and a guardian ad litem at the same time. An attorney cannot say, I will represent you and I will keep your confidence. If the child says, my foster family feeds me different food than the rest of the family, the attorney will say he or she will not tell anyone. Will the child let the attorney tell someone about the problem in order to find a solution? If the attorney is a guardian ad litem on the other side, he or she would need to tell the court about the problem. These two have different roles. We thought by eliminating section 2, we had addressed your concerns by focusing on children having a voice.

SENATOR HAMMOND:
It sounds like I am not advocating for children to have a voice. I am, but the testimony I heard back in 2015 is that the guardian ad litem is also the voice of a child. It is just a different model. Sometimes there are individuals who would like to have one model or the other. This is where people may differ in the approach regarding wants versus needs. I like the language because it provides a choice and gives a voice to the child. You do not have to reinstate the deleted language, but it would have to be there for me to support the bill in its entirety.

SENATOR RATTI:
I want to ensure there is absolute clarity. That specific language does not prevent a child or the system from choosing either a guardian ad litem or a client-directed attorney to represent the child as counsel. It just prevents the same individual from playing both roles. Do you still have a concern?

SENATOR HAMMOND:
That is not the way I read the bill. The way I read it is that you can still have two different attorneys representing the child and they both would be paid. I want to ensure there is one attorney representing the wants of the child and one attorney representing the needs of the child, with both attorneys being eligible for compensation. In this case, the guardian ad litem is an attorney.

ERIC ROBBINS (Counsel):
The person appointed pursuant to NRS 432B.420 is the attorney appointed to represent the wants of the child. Saying that person cannot also be the guardian ad litem is not saying an attorney cannot be the guardian ad litem. There could be another attorney who serves as the guardian ad litem. If we

remove paragraph (d) of subsection 1 of section 2, the guardian ad litem could be compensated.

SENATOR HAMMOND:
Are you saying if we keep the language in subsection 4 of section 1 and we remove section 2 that it will accomplish what I have requested?

MR. ROBBINS:
If what you are asking for is for an attorney to be appointed to be able to be appointed guardian ad litem and for that attorney to be compensated, then yes.

SENATOR HAMMOND:
I do not mind if there are two attorneys, I just want to make sure that an attorney who is the guardian ad litem can be compensated.

MR. ROBBINS:
That is the case. If we make this change, I would recommend keeping paragraph (c) of subsection 1 of section 2 just as clarification. If we delete paragraph (c) and also leave out the struck language in subsection 4 of section 1, it leaves us in an ambiguous situation. Whereas paragraph (c) clarifies the attorney appointed to represent the wants of the child pursuant to NRS 432B.420 cannot also serve as the guardian ad litem. The language does not say that an attorney cannot be appointed guardian ad litem and be compensated.

SENATOR HARDY:
I am a doctor and I have this Chinese Wall, a legal term, that differentiates what I do in my office and what I do on the street. When I am subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I do not recognize someone on the street if I have only seen them in my office unless they recognize me. Otherwise I would be saying, "Yes, you are my patient and I am so glad you came into the office today." Can there be a Chinese Wall between the guardian ad litem and the representing attorney?

MS. BUCKLEY:
In Nevada, we have attorneys that represent the child and the CASA that serves as the guardian ad litem. If the court had an oddball case and stated they could benefit from an attorney to serve as the guardian ad litem, the court could appoint another attorney to serve in that capacity. Lawyers typically do not mix

these responsibilities because, under one hat, the attorney must follow the Nevada Rules of Professional Conduct to keep confidences and under the rules of the guardian ad litem, that person must provide information to the court.

Wearing the guardian ad litem hat, the person is acting as an officer of the court, not just an attorney. If one code provides instruction of confidentiality and the other code wants information provided to the court, it puts the attorney in ethical conflict. I have not seen a case where this has occurred because of the concern of the attorney losing his or her license. If we remove the language regarding the payment, so we do not disturb what was passed in 2015, I think we can achieve the policy goal of the Committee.

SENATOR HARDY:
Can we appoint two attorneys, one as an attorney and the other as a guardian ad litem and leave the language we approved during the last Session so they will be compensated?

SENATOR HAMMOND:
I am comfortable at this point.

SENATOR RATTI:
To summarize, we are leaving the clarifying language, "If an attorney is paid through the legal services program in a county, that attorney is not entitled to compensation under this statute," and we are removing section 1, subsection 2, paragraph (d). The deleted language in section 1, subsection 4 will remain stricken.

MS. BUCKLEY:
Yes.

> SENATOR WOODHOUSE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 305.
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> SENATOR RATTI SECONDED THE MOTION.
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> THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:
I will open the work session on S.B. 50.

SENATE BILL 50: Provides for advance directives governing the provision of psychiatric care. (BDR 40-174)

MS. COMLOSSY:
Following the work session document (Exhibit F), S.B. 50 was heard in Committee on February 27. Senate Bill 50 authorizes a person who is at least 18 years of age to execute an advance directive for psychiatric care to provide direction to health care providers in the event the person is incapable of making decisions or communicating decisions regarding such care. The bill provides a sample form for the advance directive; establishes the circumstances in which an advance directive for psychiatric care becomes operative and the circumstances in which it may be revoked; outlines the circumstances in which a health care provider may not comply with the directive; shields a provider from civil or criminal liability; and adds an advance directive for psychiatric care to the definition of advance directive for inclusion with the Secretary of State for deposit in the Registry of Advance Directives for Health Care.

A few amendments were proposed during the bill hearing by the Division of Public and Behavioral Health (DPBH) of the DHHS and are included in the work session document, Exhibit F.

Chair Spearman also proposed an amendment to section 16, as amended by the DPBH to clarify that a provider of health care, when acting in good faith, is expected to make a reasonable inquiry as to whether a patient has completed a psychiatric advance directive.

Our legal counsel asked us to clarify this reasonable inquiry will be conducted if or when a patient is incapable or refusing to consent to psychiatric care as described in section 9 of the bill.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 50.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:
I will open the work session on S.B. 181.

SENATE BILL 181: Revises provisions governing certain alcohol and drug abuse programs. (BDR 16-513)

MS. COMLOSSY:
Following the work session document (Exhibit G), S.B. 181 was heard in this Committee on March 22. The bill makes changes relating to treatment for substance abuse. It creates the Account for the Treatment of Substance Abusers in the State General Fund and provides the Account shall be administered by the director of the Department of Corrections. Money in the Account must be used for programs for the treatment of offenders who are abusers of alcohol and drugs. The bill also increased the tax on certain types of liquor and on cigarettes.

In addition, it increases the fee the Nevada Gaming Commission must charge and collect for a gaming license.

Senate Bill 181 requires the DPBH of the DHHS to establish a four-year pilot program for heroin-assisted treatment and requires certain reports be submitted to the Legislature regarding the program. Finally, the bill appropriates $65 million each year of the biennium to the Account for the Treatment of Substance Abusers and another $10 million each year of the biennium to fund the pilot program for heroin-assisted treatment. No amendments were proposed for this measure.

SENATOR WOODHOUSE MOVED TO DO PASS AND RE-REFER S.B. 181 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS HAMMOND AND HARDY VOTED NO.)

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CHAIR SPEARMAN:
I will open the work session on S.B. 192.

SENATE BILL 192: Establishes required hours of operation for certain mobile mental health units. (BDR 39-816)

MS. COMLOSSY:
Following the work session document (Exhibit H), S.B. 192 was heard in Committee on March 29. The bill requires any facility within the DPBH of the DHHS which provides mobile mental health services in a county whose population is 100,000 or more, currently Clark and Washoe Counties, to provide those services from 8:00 a.m. or earlier to 12:00 a.m. or later, seven days a week, including holidays.

No amendments were proposed for this measure.

SENATOR HARDY:
I do not know how these offices can comply with this bill, so I will not be voting in favor of S.B. 192.

SENATOR RATTI:
This has been one of my favorite bills of the Session because of the challenges we were facing when I was on the City Council in Sparks. We have to do this. I will be supporting the bill.

SENATOR WOODHOUSE MOVED TO DO PASS S.B. 192.

SENATOR RATTI SECONDED THE MOTION.

CHAIR SPEARMAN:
I know there are some fiscal challenges with S.B. 192, but there is another bill coming forward relative to social impact bonding which may help. The intent is to use private money to fund social programs through 501(c)(3)s.

THE MOTION PASSED. (SENATORS HAMMOND AND HARDY VOTED NO.)

*****

CHAIR SPEARMAN:
I will open the work session on S.B. 219.

SENATE BILL 219: Provides for the regulation of certain sources of non-ionizing radiation. (BDR 40-889)

MS. COMLOSSY:
Following the work session document (Exhibit I), S.B. 219 was heard in Committee on March 27. The bill defines and requires the DPBH of the DHHS to regulate potentially hazardous non-ionizing radiation. The bill makes it a misdemeanor to use, manufacture, produce, or knowingly transport, own, or possess an unregistered source of potentially hazardous non-ionizing radiation for which registration is required.

In addition, the Division is authorized to enforce certain existing laws related to tanning equipment at a tanning establishment and to suspend, revoke, or amend the license or registration of a person who violates any provision of statute or regulation related to radioactive materials, radiation, or tanning establishments.

Senator Woodhouse proposed an amendment to limit the bill's provisions to apply to tanning equipment and tanning establishments, as defined in chapter 597 of NRS as the Miscellaneous Trade Regulations and Prohibited Act.

Jeannette K. Belz, President, J. K. Belz and Associates, proposed the attached amendment which requires a person to obtain from the DPBH a license to perform radiation therapy or radiologic imaging on humans, among other things.

SENATOR WOODHOUSE:
With these two amendments, we have addressed the organizations and individuals who will be affected by this bill. The only entities still unhappy with the bill are the podiatrists. Everyone else worked with Ms. Belz, and we were able to answer all of the questions posed.

SENATOR HARDY:
I will not support the bill as the podiatrists have not had their concerns addressed.

SENATOR HAMMOND:
There was a lot of good work done on the bill, but I cannot support it because of the podiatrists.

SENATOR RATTI MOVED TO AMEND AND DO PASS AS AMENDED S.B. 219.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS HAMMOND AND HARDY VOTED NO.)

*****

CHAIR SPEARMAN:
I will open the work session on S.B. 266.

SENATE BILL 266: Makes various changes relating to providers of certain health care services in the home. (BDR 39-370)

MS. COMLOSSY:
Following the work session document (Exhibit J), S.B. 266 was heard in this Committee on March 22. This bill establishes statutory and regulatory systems for community-based living arrangement (CBLA) services under the authority of the DPBH, within the DHHS. It requires such systems to be similar to existing systems for supported living arrangement (SLA) services under the authority of the Aging and Disability Services Division (ADSD) of the DHHS.

In addition, the bill provides for the certification of CBLA providers by DPBH; requires DPBH to establish regulatory standards for CBLAs similar to SLAs; requires consumers of CBLA and SLA services to be provided certain information; requires periodic inspections or surveys of locations in which CBLA or SLA services are provided to ensure compliance with applicable statutes and regulations; and provides for the imposition of administrative penalties by DPBH and ADSD on CBLA and SLA providers, respectively.

Upon receipt of a complaint from a consumer of CBLA or SLA service regarding services outside the authority of DPBH or ADSD, the bill requires each Division to identify and forward the complaint to the appropriate agency within a specified time period.

No amendments were proposed for this measure.

SENATOR HARDY MOVED TO DO PASS S.B. 266.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

*****

CHAIR SPEARMAN:
I will open the work session on S.B. 274.

SENATE BILL 274: Revises provisions relating to sibling visitation in child welfare cases. (BDR 38-925)

MS. COMLOSSY:
Following the work session document (Exhibit K), S.B. 274 was heard in this Committee on March 27. This bill relates to visitation by siblings of a child who is in need of protection and is placed with someone other than a parent and separate from the child's siblings. Specifically, the bill requires an agency that provides child welfare services to update the sibling visitation plan to reflect any change in the placement of the child or any sibling of the child.

In addition, the court must provide any sibling who has been granted a right to visitation with the child with notice of a hearing to review the placement of the child. The court must also provide each sibling with the case number of certain proceedings and allow the sibling to inspect records to petition the court for visitation with the child and to enforce an order for visitation.

The bill also requires the court to hold the hearing to determine whether to include an order for visitation with a sibling in the decree of adoption of a child who is in the custody of a child welfare agency on a different date than the hearing on the petition or adoption.

Finally, it gives any sibling the right to participate in the hearing and requires the clerk of the court to provide notice of the hearing to certain individuals. The mock-up is attached to the work session document, Exhibit K, and was presented during the bill hearing.

SENATOR HARDY:
I am looking at the word "any". We talked about a sibling who has been granted the right to visitation and that any sibling has a right to participate in the hearing. If there has been something that has been egregious by one sibling that we do not want the original child exposed to again, and then we give the sibling the right to participate in the hearing, I think this is problematic.

SENATOR HAMMOND:
I know many adoptive parents, and some of them have adopted children through the county. The concern that always crops up is there are siblings that are not very far apart and one sibling is not good for the other sibling. Yet we sometimes try to force them back together or force them to see each other, and it is not a good situation. Can anyone address the issue brought forth by Senator Hardy?

SENATOR RATTI:
What the bill does is insist there be a sibling plan, approved by the court, and the court acts in the best interest of the child. If it is not in the best interest of the child for there to be a sibling visitation plan, then sibling visitation does not occur.

If there is an order to provide each sibling with a case number of the proceeding for the purpose of allowing the sibling to petition the court for visitation, the sibling can get the case number in order to petition the court for visitation. It does not mean they automatically receive visitation. The court retains the discretion to determine if the visitation should occur and if it is in the best interest of the child. We are trying to create a mechanism that addresses the concerns voiced by the kids already in foster care who are separated from their siblings and have had a hard time reconnecting.

SENATOR HAMMOND:
As I understand it, even after an adoption occurs, siblings still have the right to ask to attend a hearing and force the other sibling to come to the hearing or at

least be heard and/or seen. It does not make sense to me to put this into place when we are trying to move forward after adoptions occur.

MS. BORTOLIN:
I am not sure where you are seeing the word "any". Could you direct me to the word in the bill? You can only come back after the adoption if this decree is part of the adoption case. If these terms are not included in the adoption decree at the time it is entered, the door is closed. The decree will not be reopened.

If a sibling visitation order is entered with the adoption decree, there is now a clear route to enforcement rather than sending the family to civil court in front of a nonfamily court judge who may not understand the case for contract enforcement. We are creating a route through family court, whereas now it is handled as a contract court issue. This means the best interest of the child is not being considered because it is not part of contract law.

CHAIR SPEARMAN:
Is this language permissive? The visitation can happen, but just because it is in the bill does not mean visitation has to happen. I am looking at section 1, subsection 2, paragraph (a) where it states, "An evaluation of the progress of the child and the family of the child and any recommendations for further supervision, treatment or rehabilitation." I read this as setting the parameters.

Section 1, subsection 2, paragraph (b), subparagraph (4), sub-subparagraph (II) reads, "A plan for the child to visit the siblings, which must be presented at the first hearing to occur after the siblings are separated and approved by the court." My understanding is that there are some preliminary things that take place to set the infrastructure for family court as opposed to civil court. The language does not make it mandatory for a sibling to go through this process.

I believe Senator Hammond's concern is addressed in section 1, when the court is trying to determine what will be in the best interest of the child. As an example, there are two siblings who get along pretty well right now, but there comes a point in time when they do not get along. Does this language mean that one sibling can say I do not want my sibling to be in the courtroom or does the language prohibit that discussion from taking place?

MS. BORTOLIN:
The discussion is not prohibited from taking place. The process is long, as we start at the beginning of the foster care case. We are only dealing with foster care cases that move into adoption. It could be a very long time until we get to the point of there being an adoption decree being entered.

Concerns can be raised at any point that could be litigated prior to the adoption hearing. The adoptive parents may have come in late to this scenario, so they are able to express their opinions, wants and needs about what is a good sibling visitation and should it occur. I do not frequently see this litigated. It is usually something all parties agree to. We sit down and decide what will work if there is going to be a sibling visitation. If there is no agreement to sibling visitation in NRS 432B, it is not something that is randomly brought forth during the adoption process. If the social worker says these two siblings are not good for each other and should not be together, we would honor that information.

When the sibling visitation is entered as part of the adoption decree once the adoption is closed, it is sealed. When one party moves and there is no way to contact them, we do not want to send these siblings to a different court environment when they are used to being in family court. Using contract law is confusing when we have been under the realm of the best interests of the children.

Judges will not have access to the information we have from the foster care case and from the adoption. These judges would not have access to any of the information from prior cases that would document agreements. The judge will see a court order and make a determination on a contractual agreement and enforce it as such.

Senator Hammond's concerns will be better addressed in family court than general jurisdiction contract court, where it is being addressed now.

SENATOR HAMMOND:
Is the agreement put into place prior to the end of the adoption process? Does this allow you to move the case back into family court where the judge will have access to all prior information concerning these children to determine if it is in the best interest of the child?

MS. BORTOLIN:
Yes. We want the case back in front of the family court judge who has access to all information regarding these children and families.

SENATOR HARDY:
Oftentimes there are many problems with this whole process, and sometimes there is not an accusation or a firm memory of the sexual abuse by a sibling that may come out at a later date. There is an agreement to allow visitation with a sibling and we have notified the sibling of the whereabouts of the sibling and where they will be for the hearing. Are we providing a legal way for the sibling to get at the other sibling without the ability to say no unless the child goes to court? It seems unfair to the person who is required to go to court if they do not want to see the sibling again to relive a problem they had in the family.

MS. BORTOLIN:
Because these cases are closed, if the parties agree to go their separate ways there would be an initiating party to begin the litigation process. If one sibling wants to initiate a petition to open an agreement, he or she would have to take the action. From a family court perspective, there are policies and procedures allowing for children to testify by alternative means because we are taking the best interest of the child into consideration.

As a children's attorney, I would say that is a great example of why someone would come to court and say I feel that placing this child in this courtroom would be harmful to the child because I do not want them to see the other parties. I do not know if these same procedures can be used in contract court. I think it would be harder to get at some of these same protections as it is currently litigated.

CHAIR SPEARMAN:
I would like to go back to section 1, subsection 2 which reads, "An agency acting as the custodian of the child shall, before any hearing for review of the placement of a child, submit a report to the court, or to the panel if it has been designated to review the matter, which includes …".

I think Senator Hardy is asking if the child who is being placed needs protection, he or she should have a say in his or her protection. I would go back to section 1, subsection 2, which lists that the report will include an evaluation of

the progress of the child and the family of the child and any recommendations for further supervision, treatment or rehabilitation, and information concerning the placement of the child in relation to the child's siblings. This information would include without limitation, whether the child was placed together with the siblings, and if the child is not placed together with the siblings, the reasons why the child is not placed together with the siblings.

I feel this is permissive, not prescriptive. Someone is allowed to do this, but it is not required.

You hear a lot about people who are adopted and know nothing about anyone in their biological families. I have a friend in another state who needed information on family illnesses. There is no way to find out who my friend's siblings are or how to contact them. I see this as being good for someone who is 6 or 16. Someone who is 60 may not have the same opportunity, although it may be information that could make a difference in life or death.

MS. BORTOLIN:
It is difficult to go back and reopen an adoption case. If someone who is 30 wants to go back and petitions to open his or her own adoption records, it is hard, as it is reviewed strictly by the court. This is not something that will be done lightly. Because these cases are sealed, they are being sent to general jurisdiction court. There is a consensus between stakeholders and child welfare that it does not make sense and is not working. We want to have a holistic approach without opening up too much of the adoption information. We hope this will solve problems without creating more.

SENATOR HARDY:
Will this unseal something?

MS. BORTOLIN:
No. We made sure the language of the bill does not open anything, but gives a child the right to get back in front of a family court judge.

SENATOR HARDY:
Who is petitioning the court?

MS. BORTOLIN:
One of the siblings included in the sibling visitation order.

SENATOR HARDY:
Is it harder to petition the court in family court or the general jurisdiction court?

MS. BORTOLIN:
If there is no sibling visitation order saying this sibling has a right see another sibling, there will be no contact. This does not cover any sibling.

SENATOR HARDY:
In section 1, subsection 4, where is says, "the court shall provide each sibling of the child with the case number of the proceeding for the purpose of allowing the sibling to petition the court," are you saying each sibling must already be included in the sibling visitation order?

MS. BORTOLIN:
Yes. The language you are referencing is still in the foster care portion of NRS, so it will not create any confidential issues.

SENATOR HAMMOND:
I think I understand this better now, and it gives me comfort to know the judge who has been dealing with the case will have it again.

SENATOR HARDY:
Where does it provide the adopted sibling the right to say they do not want to meet with another sibling or be exposed to the court proceeding?

MS. BORTOLIN:
Section 3, subsection 2, of Proposed Amendment 3259 to S.B. 274 states, "The court shall incorporate an order provided pursuant to subsection 1 into the decree of adoption unless, … ." Each party has the right to object. The objection will create a review of the decree that has already been agreed upon. This was the language we worked through with the district attorney's office and social services. We felt there should be a second opportunity to object rather than assuming the same order will remain in place. The process can be very long if new parties such as adoptive parents who are new to the case become involved in the decree.

There may be an established sibling visitation order from the case being heard earlier when the child was first brought into care. We are creating a second

opportunity prior to the adoption to allow anyone to explain why the visitation should not occur and/or remain in effect.

SENATOR HARDY:
Where in the bill does it say the child does not have to agree to the sibling visitation?

MS. BORTOLIN:
The language in section 3, subsection 2, of Proposed Amendment 3259 allows the child and the court to object to the visitation decree so it can be re-examined.

SENATOR HARDY:
Can you provide me with the location?

MS. BORTOLIN:
Section 3, subsection 2, of Proposed Amendment 3259 states, "unless … an interested party in the adoption, including, without limitation, the adoptive parent, the adoptive child, a sibling of the adoptive child, the agency which provides child welfare services or a licensed child-placing agency petitions the court to exclude the order of visitation with a sibling from the decree of adoption."

CHAIR SPEARMAN:
Do we need to add clarity to the language?

MR. ROBBINS:
As currently drafted, subsection 4 of section 1 does allow any sibling of the child to have the case number and petition the court for visitation, but it is not necessarily someone who is allowed visitation in the original order. If the Committee wants to provide that the case number can only be provided to a sibling who has been allowed visitation, the language would have to be amended.

MS. BORTOLIN:
Our only concern with that is that section 1 is in the foster care case and not about the adoption case number. We are still at the point of deciding if there will be sibling visitation at the beginning of the process.

STEPHANIE COOK (Washoe Legal Services):
As mentioned, the language is provided in one of the sections of NRS 432B which specifically deals with the abuse and neglect section of the case when a child is initially removed. At that point, there is no sibling visitation even among the siblings who would like to see each other to continue a relationship. Oftentimes what we see is children becoming separated within 72 hours of them being removed from the parents. In some cases, an older sibling may be able to remain in the home because he or she is not as vulnerable to the safety risks that would affect a three-year-old. Sometimes we want to ensure that all of the siblings will have the opportunity to see or call each other if they are not all placed locally.

SENATOR HARDY:
Can we add language to the effect that if a child does not want visitation by a sibling, in the foster care portion or the adoption portion of the bill, he or she is allowed to tell the court he or she does not want the visitation?

MS. BORTOLIN:
Looking at page 2 of Proposed Amendment 3259, the sentence being added that says, "Upon the issuance of such an order … ." I think we can clarify that only the children subject to that order can receive the case number, because at that point, the court would have already determined the visitation should be put in place. As clarification, it is the children subject to that order.

SENATOR HARDY:
If the language applies to the foster care portion of the bill, does it automatically apply to the adoption portion of the bill?

MS. BORTOLIN:
No.

SENATOR HARDY:
However I vote today in Committee, I retain the right to change my vote on the Senate Floor.

SENATOR WOODHOUSE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 274.

SENATOR RATTI SECONDED THE MOTION.

SENATOR HAMMOND:
However I vote today in Committee, I retain the right to change my vote on the Senate Floor.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:
I will open the work session on S.B. 482.

SENATE BILL 482: Provides for the establishment of a system for rating certain health care facilities. (BDR 40-605)

MS. COMLOSSY:
Following the work session document (Exhibit L), S.B. 482 was heard in this Committee on March 31. Senate Bill 482 requires the State Board of Health, DPBH within the DHHS, to adopt regulations establishing a system for rating each medical facility and facility for the dependent based on inspections DPBH conducts pursuant to NRS 449.132. The rating system must provide for the assignment of a letter grade of A, B, C, D, or F to each facility based on compliance with applicable statutes, regulations and standards. Letter grades must be posted on the Division's Website and in a conspicuous location near each entrance to the facility regularly used by the public.

There were a few amendments proposed. The DPBH proposed the attached amendment to remove F from the list of letter grades that may be assigned to each facility.

The sponsor of the bill proposed the changes in attached Proposed Amendment 3359 which: provides the rating system may also be based on an investigation conducted pursuant to NRS 449.0307; requires the regulations adopted by the State Board of Health to establish procedures in which a facility may request a follow-up inspection within 30 days of the initial investigation or inspection or appeal a finding of a violation; describes when a letter grade becomes final; requires the letter grade be posted within 5 days of finalization; requires every member of the staffing committee of certain health care facilities that are required to have a written policy and a documented staffing plan to sign both the written policy and the staffing plan; and appropriates $200,000 from

the State General Fund to DPBH for expenses incurred to carry out the provisions of the bill.

There is an additional proposed amendment (Exhibit M) submitted by Bill Welch representing the Nevada Hospital Association and Kathleen Conaboy, representing the Ambulatory Surgery Center Association.

CHAIR SPEARMAN:
Since there has been so much confusion regarding the intent of this legislation, I have asked some people to provide some clarity as there are all kinds of rumors about the bill that are incorrect.

As the sponsor of the bill, the bill is not designed to be punitive. The bill does not change any categories of the current rating scheme. The only thing that happens is instead of yes, no, and not applicable, the Department will now determine a numeric rating for each category.

However the facility is rated now in accordance with NRS is how the facility will be rated following the passing of this bill. If a facility falls under NRS 449 now, it will not be rated relative to NRS 435 or vice versa. The only change is instead of a completed report, the facility will receive a letter grade. It is still my opinion that if consumers are afforded an opportunity to know what letter grade a restaurant or eating establishment received before they order food, it is equally important for someone who is going to a medical facility to know what letter grade the facility earned.

CODY L. PHINNEY (Administrator, Division of Public and Behavioral Health, Department of Health and Human Services):
I would like to clarify a couple of things that came from the testimony on S.B. 482. The DPBH and specifically, the Bureau of Health Care Quality and Compliance, has no intention of changing the factors by which we currently evaluate health care facilities or facilities for the dependent. Rather, it makes information referencing the result of that evaluation more transparent to the public.

CHAIR SPEARMAN:
You are talking about making the reports more transparent to the public. Is this information available now? If so, how easily accessible is the information to the public?

MS. PHINNEY:
The information is available once a survey is finalized. However, the information is available on our Website, but it is written in technical language.

As the State Board of Health adopts regulations, it is our intent and purpose to ensure the formula and regulations that convert the current evaluation to a letter grade do not penalize facilities that have high complexity services or high complexity patients. We want to be fair in establishing the standard of care and communicating to the public that a facility has met the standard of care that is expected in the existing evaluation process.

Lastly, there was some discussion about a need for additional surveyors. The Bureau of Health Care Quality and Compliance has evaluated this suggestion and has in place adequate positions to implement this process as it is stated in the language of the original bill. There is no need for additional surveyors. We consider a variety of activities as evaluations of health care facilities and facilities for the dependent. We do not need additional positions to accomplish what the bill is asking from us.

CHAIR SPEARMAN:
If you complete a variety of inspections could you explain that further?

MS. PHINNEY:
The Bureau of Health Care Quality and Compliance conducts periodic surveys of facilities and it conducts surveys in response to complaints submitted to the Bureau related to facilities. The Bureau completes work on behalf of the Centers for Medicare and Medicaid Services doing certification surveys. In addition, hospitals are often regulated by other subscription organizations such as The Joint Commission that provides information and evaluations on the quality and activities of the facilities.

CHAIR SPEARMAN:
Does this legislation change anything you are already doing with the variety of surveys or inspections?

MS. PHINNEY:
This legislation does not change what is being evaluated in the activities I just described. The only thing that changes is the way in which we communicate the outcome of the evaluation to the public.

CHAIR SPEARMAN:
Has the Bureau had a chance to read and review the proposed amendment, Exhibit M, submitted by the Nevada Hospital Association and the Ambulatory Surgery Center Association?

MS. PHINNEY:
Yes, we were able to review the amendment today.

CHAIR SPEARMAN:
What did you think?

MS. PHINNEY:
I believe the concern being addressed in the amendment, Exhibit M, is that the grading system does not penalize facilities that have complex levels of care and patients with complex problems. I have concerns about the way that amendment is written as it could create an incentive to impact the grade by changing the levels of care or numbers of patients.

SENATOR HARDY:
If I was the facility and received a D, I would probably want a reevaluation within 30 days; so every time I see another survey within 30 days, I think you will need additional people to complete the work.

MS. PHINNEY:
The current process includes the ability to provide a plan of correction, have the Bureau review the plan of correction and accept it. The current process affords the same kinds of reevaluation and correction processes we anticipate being included going forward.

SENATOR HARDY:
When I talk to representatives of the hospitals, they indicate they may see a surveyor periodically. Will this new process continue with the current rotation? What is the timing for the survey?

MS. PHINNEY:
We reviewed all of the previous dates for surveys related to some of the testimony, and that is why I mentioned there are periodic surveys and there are surveys driven by complaints. When looking at the information in its entirety, the periodicity turns out to be about a one- to two-year basis.

SENATOR RATTI:
Could you address the second part of the amendment, Exhibit M, which pertains to the appointment of an advisory committee?

MS. PHINNEY:
We do not object to the creation of an advisory committee for the development and rulemaking process.

CHAIR SPEARMAN:
Will there be an opportunity for input from the facilities?

MS. PHINNEY:
Yes, we are happy to work with the industry. We do a fair amount of consensus in our various rulemaking processes throughout the Division and find it to be very beneficial.

SENATOR HARDY:
During the past surveys have you ever found a facility that would deserve a D? Are you optimistic this is going to uncover problems that will finally get us to a place of standard care across the board?

MS. PHINNEY:
I anticipate this provides the public with more transparent information and provides an excellent motivator to ensure compliance is a top priority. My experience with the health care industry is that compliance is a top priority.

CHAIR SPEARMAN:
The intent of the bill is to provide more transparency for the public and to make sure people do not have to go to many different places to piece together information. The Better Business Bureau grades businesses and other entities in order to provide greater transparency for the public. This bill simply adds more transparency for the public, but nothing really changes with how the evaluations are conducted. The conclusion of the existing process results in a letter grade.

MS. PHINNEY:
That is my understanding, also.

CHAIR SPEARMAN:
I cannot understand why this is so contentious when the only thing that changes is the letter grade to provide greater transparency. We could add another amendment to the bill which would require the Division to provide a link to its Website showing the evaluation and letter grade. The facility could also post the link on its Website for someone to review the evaluation in its entirety.

SENATOR HAMMOND:
I asked a question during the hearing, noting that something like this was proposed previously, but a large fiscal note was attached to the bill. There was testimony in the neutral position that transparency is a great idea but the problem was with the number of staff members and the possibility of a facility receiving a bad letter grade, correcting the problem and having to wait much longer than 30 days or 6 months in order to report the correction.

The intent was not to be punitive, but it has become punitive. That caused me quite a bit of concern. These people live within the system and need to be a part of the system. The first discussion inspired me to talk to other hospital representatives, and I heard the same concerns.

The Chair asked at the beginning of the meeting if we look at the letter grade of restaurants, but I do not because I look at Yelp and other crowdsourcing sites. I do not even think about government rankings anymore. I try to find out what people are saying about a certain restaurant. Crowdsourcing may be the replacement for government rankings based on the amount of information available now.

CHAIR SPEARMAN:
That may be true for our generation, but I always go back to the people who do not use computers and social media. Do you have the staffing needed to handle this new process?

MS. PHINNEY:
The analysis from the Bureau of Health Care Quality and Compliance was that the number of authorized positions can absorb the workload. We currently have some vacancies which resulted in some of the issues brought up in the hearing for this bill. We are implementing a plan to fill those 17 vacancies, and there is no request for additional positions.

CHAIR SPEARMAN:
If someone requests a reinspection or if there are some improprieties, can the facility request a follow-up now?

MS. PHINNEY:
Yes. There is a process where a plan of correction is accepted and citations are addressed at facilities.

CHAIR SPEARMAN:
It is not my intent to change that process. Is there any language in this bill that changes what is being done right now with the reinspection or follow-up? I want to make sure this bill will not change the existing processes.

MS. PHINNEY:
That is our understanding. The development of the conversion of the current scoring process to a letter grade will ensure the language is not punitive and is translating what is currently being done.

SENATOR HAMMOND:
If you can fill your vacancies and show me some consistency, then I could support the process. I would like to see it before I can believe it in this case.

SENATOR RATTI:
Are we adding the advisory committee portion of the amendment to the bill?

CHAIR SPEARMAN:
Is the advisory committee necessary?

MS. PHINNEY:
It is our intention to have extensive community input into the development of regulations to address it if this legislation passes. The establishment of an advisory board is not problematic for the Division, but would the advisory board need to continue after the regulation and rulemaking process is established?

CHAIR SPEARMAN:
Is this an established process for the Division?

MS. PHINNEY:
The rulemaking process is the regulation process established in statute so the advisory board could be established or it could be completed through the established rulemaking process. The two look very similar.

CHAIR SPEARMAN:
Can we say the advisory committee will be part of the rulemaking process?

KATHLEEN CONABOY (Ambulatory Surgery Center Association):
Based on today's testimony, we are willing to withdraw the portion of the amendment pertaining to the advisory committee. Our concerns remain about the waiting and that is why it is so important to have the medical facilities involved closely with the factors in the inspection processes, which are very lengthy in some cases. There is much work to be done in that regard.

MS. PHINNEY:
We will be working closely with all entities during the rulemaking process to ensure those waits are addressed.

SENATOR WOODHOUSE MOVED TO AMEND AND DO PASS AS AMENDED, ADDING THE PROPOSED AMENDMENT FROM THE NEVADA HOSPITAL ASSOCIATION AND THE AMBULATORY SURGERY CENTER ASSOCIATION AND RE-REFER S.B. 482 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS HAMMOND AND HARDY VOTED NO.)

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VICE CHAIR RATTI:
I will open the hearing on S.B. 394.

SENATE BILL 394: Revises provisions relating to Medicaid managed care and required coverage provided by health insurers. (BDR 38-950)

SENATOR PAT SPEARMAN (Senatorial District No. 1):
In order to take advantage of federal law, section 2 of this bill requires the Nevada DHHS to seek any necessary waiver of certain provisions of federal law to allow a Medicaid Managed Care Program to be offered for purchase through the Silver State Health Insurance Exchange to persons who are otherwise ineligible for Medicaid.

Section 2 also requires DHHS to seek a federal waiver to allow people to use the federal income tax credit and cost-sharing reductions authorized by the Affordable Care Act to purchase coverage through a Medicaid Managed Care Program made available by the Silver State Health Insurance Exchange.

Section 3 allows any person who is not otherwise eligible for Medicaid to purchase coverage through the Medicaid Managed Care Program to the extent allowed by federal law or if any necessary waiver is granted by the Secretary of the United States Department of Health and Human Services.

Section 3 also requires the Director of the Nevada Department of Health and Human Services to set the annual premium paid by a person who purchases such coverage and requires that the benefits offered in the Medicaid Managed Care Program be the same as those provided to other Medicaid recipients.

Finally, section 3 prohibits the DHHS from using any federal money to offer such coverage through the Medicaid Managed Care Program.

Sections 8, 15, 19, 24, 28, 34, 41 and 45 bring Nevada into compliance with federal law and require all insurers offer health insurance coverage regardless of a person's health or preexisting condition. These sections also prohibit an insurer from denying, limiting or excluding a benefit or requiring payment of a higher premium deductible, coinsurance or co-pay based on a person's health status or that of their spouse or dependents.

Sections 9, 13, 25, 29. 35, 42 and 46 align Nevada law with federal law as to prohibitions on annual or lifetime limits on certain essential health benefits requiring DHHS to issue regulations that set forth the services which must be covered as an essential health benefit by an insurer. This includes, at minimum, the services required to be covered under the Affordable Care Act.

Sections 10, 14, 26, 30, 36, 43 and 47 require insurers to extend coverage for a covered adult until the adult child reaches 26 years of age, which aligns Nevada law with the existing federal law.

Section 48 revises the definition of a qualified health plan to include the Medicaid Managed Care Program so it can be offered in the same way as other health plans through the Silver State Health Insurance Exchange.

We are well aware of the discussions happening around the Country and at the federal level. The possibility that almost 400,000 Nevadans might lose their health insurance coverage is quite concerning. The purpose of this bill is to ensure we pay attention to the needs of Nevadans and protect our citizens.

This bill highlights what is already specified in the Affordable Care Act, making the services applicable to Nevada in the event the threat to repeal the Affordable Care Act is imposed.

DANNY THOMPSON (Laborers Union Local No. 872):
Currently, when we enter into negotiations with our employers, health care is the most expensive part of our benefit package. Over the past four or five years, those costs have had astronomical increases. In the case of Laborers Union Local No. 872, in 5 years, the cost of an HMO increased 70 percent. The increases are almost always double digits. It is difficult to tell an employer to increase its health care benefits by 20 percent when it is already the most expensive service it pays for. Now it is not only difficult but impossible. This is the main reason we opposed the Cadillac Tax because it would have been a 14 percent increase the employers could not absorb.

Our proposed amendment (Exhibit N) asks for the data to back up those double digit increases, data that we can receive annually showing trends. One reason is to determine a way to make up the difference and deal with the problem.

The second reason indicates many of our plans insure retirees, and we usually purchase the retiree insurance through an HMO. The problem cannot be dealt with in a practical way unless you can understand where the problem originates.

If the increase is because someone wants to make more money, that is one thing. If there are trends we can review without identifying people's names, we can identify how to make better business decisions. We can also make

decisions on how to better support retirees with health insurance. Costs may have increased due to one particular problem, and if we can identify the problem, we have a better chance of finding a solution. The amendment is written so a statistician will compile data without names or particular drug usage and other information protected under HIPAA. The amendment does require an HMO to compile the data in order for us to develop a trend line to provide better information to our employers.

SENATOR SPEARMAN:
The requested amendment is prudent, and the mechanism is already in place. I have seen health trends and costs for my district that are available and HIPAA-compliant with all pertinent data being redacted. The data shows the percentage of people who are prediabetic, diabetic or have high blood pressure. The statistics are what is being requested through this amendment. I have had our legal counsel review the amendment, and it does not seem obtuse.

HEATHER KORBULIC (Executive Director, Silver State Health Insurance Exchange):
I would like to address some of the challenges the bill presents for the Silver State Health Insurance Exchange. In 2015, the Exchange determined the current vendor was not working out, and we moved to a model called a State-based Marketplace using the federal platform. We use <http://www.healthcare.gov> for eligibility and enrollment, and as a result, we are very limited by the rules engine used by that Website. As such, the bill proposes to sell managed care plans that do not meet the federal definition of a qualified health plan. They do not have adequacy standards that are similar to a qualified health plan. Because of this, the Exchange is limited by the structure and the architecture of the Website rules engine. We are not able to put any plan that is not Affordable Care Act (ACA) qualified health plan compliant on the Website. This limits our ability to sell these health plans through the Exchange.

There is potential for the bill when it states waivers. I believe the reference is to an ACA section 1332 State Innovation Waiver. There is an opportunity to use these waivers to potentially take federal advanced premium tax subsidies and cost-sharing reductions and apply them to these plans. Again, this would have to be determined through an eligibility engine and the Exchange does not currently have a technology vendor or platform that can support the termination of subsidy assistance or sell plans that look like this.

SENATOR SPEARMAN:
Someone was going to provide me with language to address this issue to see if we can make it conform. If there are things you cannot do right now because of the way the bill is written, we may be able to make some language changes or look at another way to accomplish the same things.

MS. KORBULIC:
In the analysis I provided when we discussed the bill, we talked about if the Exchange were to go to a private technology vendor, we could follow the direction of the bill. There are several challenges presented when moving to a new technology vendor. If we were to do this, most of them that are up and running for other states are plug and play systems. A new system could be pushed into the Exchange to determine eligibility for tax subsidies. Again these are based on the ACA qualified health plans.

In this circumstance, if we were to move to a private technology vendor, it would likely require a design and build of the rules engine to accommodate the plans that are not qualified health plan compliant.

SENATOR SPEARMAN:
Is it doable?

MS. KORBULIC:
With the current setup and architecture, it is not possible.

SENATOR SPEARMAN:
Would it be possible with some changes?

MS. KORBULIC:
Yes, but with changes and waivers it could potentially take up to a year to implement.

MS. JENSEN:
We do want to be helpful in exploring solutions and providing information that is currently available; however, there are many unknowns as the bill is currently written. The bill requires DHHS to make a health plan available by the Exchange and requires the director of DHHS to seek any necessary waivers.

The federal exchange we are associated with is not an option at this time. We could apply for waivers to look at a State platform. If that is accomplished, the waiver application and operations of the plan could remain with the Exchange even though the bill identifies DHHS as responsible to determine premium amounts. If the Silver State Health Insurance Exchange is unable to obtain the necessary waiver to upgrade such a plan, the Division of Health Care Financing and Policy could consider creating a new program with an infrastructure that is similar to our Nevada Check Up program.

There are considerations that have to be evaluated: the design; the development and implementation of an eligibility and enrollment system; a third party administrator for claims payment; actuarial services to determine appropriate premium amounts; a premiums collection system; and the leadership staffing structure. We need oversight and quality control to retain integrity.

The bill as written has an effective date of January 1, 2018, which we do not believe provides an appropriate amount of time to research, develop, design and implement a program of this magnitude. It also raises several questions regarding regulatory authority over this type of plan. We do not have the language and would need to explore this a little further. Because of the complexity and the multiple fiscal drivers and various unknowns, the Division is unable to determine a fiscal impact at this time.

Unfortunately, we are also unable to determine the fiscal impact of the remaining requirements of the bill which align State insurance regulations with the requirements of the ACA, including dependent coverage to the age of 26, essential health benefits and preexisting conditions should the federal funding end. We will need to research additional information. We would need to see how large the pool of members is to determine the premium costs and costs of the actual service.

As previously stated, the Division and the Department are willing to continue the discussions about options and possible solutions that may exist, as we do support the desire to improve our health care and health outcomes in Nevada.

DAN MUSGROVE (Amerigroup):
Amerigroup is one of two incumbents that are providing managed care for Medicaid clients in Nevada. There will be four managed care companies in Nevada as of July 1. As a managed care company, we have great concerns

because of the 400,000 people who receive coverage through the expansion of Medicaid. That coverage could potentially change with whatever may happen at the federal level.

Previous speakers did not mention the Department of Business and Industry when discussing the sale of a plan of insurance, which falls under the umbrella of the Division of Insurance. There are areas that have not yet been explored and we would like to be at the table when the discussions begin.

As a managed care company, we are responsible for managing the care of the people under our Medicaid plan. How does this affect our premiums, and how do we care for the new people who will be potentially eligible for coverage through this bill? Managed care is currently only in Clark and Washoe Counties relative to pregnant moms and children. It also covers the Medicaid expansion population which includes childless adults under the age of 64. In the other 15 counties, that population is covered under fee-for-service. Because this would be a statewide system, it would be handling new populations that have never before been covered under managed care. Will a managed care Medicaid policy be provided? These are just some of the questions that should be answered.

SENATOR SPEARMAN:
Hospitals and other medical facilities will be in quite a bind if the ACA is repealed at the federal level. Two percent of something is better than 100 percent of nothing. The other concern is what happens when this coverage goes away. Anyone who does not have insurance makes the emergency room their medical plan.

MR. MUSGROVE:
As a managed care company, we saw the population that fell under the Medicaid expansion was a very sick population because they never had access to any other health care but the emergency room. A great deal of money was spent to provide health care for this population that has never had health coverage before. We are also talking about people who are uninsured who would not be able to afford a health plan. There is a population of working poor who do not even qualify for the tax premiums under the Silver State Health Insurance Exchange. These people probably could not afford this policy either, so we will still be dealing with a large population who are uninsured, and it is a concern to every provider in Nevada.

FRAN ALMARAZ (Teamsters Local No. 631; Teamsters Local No. 986):
In the last two years, the Teamsters Local No. 631 has endured premium increases of 26 percent as shown in the fact sheet we submitted (Exhibit O). The Teamsters Local No. 986 has endured premium increases of 34 percent. I support the proposed amendment and see that the amendment is requesting transparency from the HMOs so the trust funds can determine why the rates are climbing so high.

RYAN BEAMAN (Clark County Firefighters Local 1908):
Our organization offers a self-funded nonprofit trust for our members which includes the dependents of our members, retirees and medical retirees. We had some concerns about the essential health benefits. We were not a grandfathered plan but became ACA compliant and have seen good benefits from the upgrade.

Under the ACA, our health plans are not required to offer any essential health benefits. If we do choose to offer these services, we must follow certain rules regarding essential health benefits provided, such as no annual dollar limits. As a plan provider, we can choose to provide a certain selection of those essential health benefits to try to control some of the costs associated with premiums. According to the language in the bill, we would be required to provide all of those mandates of essential health benefits.

The bill does not address whether or not our plan can include prior authorization, step therapy or reasonable medical management techniques to manage the plan. Under the ACA, retiree plans do not have to follow the provisions of the ACA, and the bill does not allow this option for our plan.

VICE CHAIR RATTI:
Are you referring to an Employee Retirement Income Security Plan (ERISA) plan?

MR. BEAMAN:
We act like an ERISA plan, but we are not an ERISA plan. In regards to the proposed amendment, some of our firefighter brothers do have the HMO requirements and we see the benefits. Especially when we look at how to manage our plan, data is a key element to management. Having good data can correct behaviors and help to manage the health plan being used. We support the amendment.

RUSTY MCALLISTER (Nevada State AFL-CIO):
We are neutral on the bill and understand the intent is to codify the language from the ACA. If the benefits of the ACA are repealed at the federal level, there is something for Nevadans to fall back on. All of the plans I represent have come in line with the provisions of the ACA. We have concerns about additional benefits outside of the ACA. Additional benefits cause us angst because there is no additional money. The only way to pay for additional benefits is to get rid of benefits somewhere else or raise premiums or co-payments for the members. This means the members take a pay cut.

The language in the bill references "without limitation." That means no pre-authorizations, no step therapy or anything we now use to control costs. The bill does not exactly match the ACA.

Senate Bill 394 allows for a child to stay on the health insurance plan until the age of 26. The ACA states, until the age of 26 unless that child has health care available to them through his or her place of employment. When I was managing a health insurance plan, we had members who would keep their children on our plans because it was better, and we had to cover those costs until we discovered the problem. We support the proposed amendment which is critical for our locals who have health care plans. If you receive a health care premium increase of 36 percent and the reason says, due to substantial health care costs, that does not provide information for us to make comparisons for our members.

SENATOR SPEARMAN:
I want to talk about this further and want you to bring some possible solutions to the table. It is not my intent to place additional burdens on health care plans, financial or otherwise. I am concerned about what happens if the ACA is repealed. One of the solutions I heard today is to eliminate the requirement to cover preexisting conditions and to possibly increase premiums for older adults. This bill is not perfect, but it is a way to begin the discussions. I will accept any suggestions to perfect this bill so Nevadans will not have to suffer for inconsistencies at the federal level.

MR. WELCH:
We appreciate the intent of the legislation and conceptually support the goal. The Nevada Hospital Association has aggressively been campaigning at the national level to help avoid an outright repeal of the ACA. We understand the

consequences if this were to happen. If the ACA is repealed, it will leave 400,000 people in Nevada uninsured and that is unacceptable to us. Many of us have made trips to Washington, D.C., and we have promoted letter campaigns in an attempt not to repeal the ACA.

I came to the hearing today to better understand the bill and would like to participate in the discussions for solutions. We have concerns with section 2 of the bill, if that is intended to be in place as an offset to the repeal of the ACA so the population currently covered by expanded Medicaid is limited to that population. The bill reads that anyone who is insured could opt out of his or her current insurance and opt to buy into the Medicaid managed care program. Only 21 percent of our patients are not under government-funded programs that pay less than cost. If the bar moves lower, the things that currently impact the premiums will become greater and greater. We only have 21 percent of our payers who pay better than cost. We are concerned about having more and more people not covering the cost of care.

VICE CHAIR RATTI:
I will close the hearing on S.B. 394.

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CHAIR SPEARMAN:
We have concluded the business of the Senate Committee on Health and Human Services for today, and are adjourned at 7:00 p.m.

RESPECTFULLY SUBMITTED:

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Martha Barnes,
Committee Secretary

APPROVED BY:

____
Senator Pat Spearman, Chair

DATE:____________________________________

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	2		Agenda
	B	9		Attendance Roster
S.B. 366	C	1	Senator Yvanna D. Cancela	Conceptual Amendment
S.B. 432	D	7	Jennifer Kuhlman / Office of the District Attorney, Clark County	Proposed Amendment
S.B. 305	E	2	Megan Comlossy	Work Session Document
S.B. 50	F	4	Megan Comlossy	Work Session Document
S.B. 181	G	1	Megan Comlossy	Work Session Document
S.B. 192	H	1	Megan Comlossy	Work Session Document
S.B. 219	I	11	Megan Comlossy	Work Session Document
S.B. 266	J	1	Megan Comlossy	Work Session Document
S.B. 274	K	8	Megan Comlossy	Work Session Document
S.B. 482	L	12	Megan Comlossy	Work Session Document
S.B. 482	M	1	Bill Welch, Nevada Hospital Association / Kathleen Conaboy, Ambulatory Surgery Center Association	Proposed Amendment
S.B. 394	N	2	Danny Thompson / Laborer's Union Local No. 872	Proposed Amendment
S.B. 394	O	1	Fran Almarez / Teamsters Local No. 631; Teamsters Local No. 986	Fact Sheet